

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VINCENT R. GRIFFIN,

Petitioner,

v.

**WARDEN, TOLEDO
CORRECTIONAL INSTITUTION,**

Respondent.

**Case No. 2:15-cv-2920
CHIEF JUDGE SARGUS
Magistrate Judge King**

ORDER


On January 30, 2017, this Court adopted the *Report and Recommendation* (ECF No. 21) and dismissed this habeas corpus action under 28 U.S.C. § 2254. *Opinion and Order* (ECF No. 34). This matter is now before the Court on Petitioner's *Motion for Reconsideration* (ECF No. 36) and on Petitioner's *Notice of Appeal* (ECF No. 37), which the Court receives as including a request for a certificate of appealability.

Petitioner was convicted after a jury trial in the Franklin County Court of Common Pleas on charges of attempted rape, felonious assault, and kidnapping. He is currently serving a term of fifty-six years to life in prison. Petitioner alleges in this action that he was denied the effective assistance of trial counsel (claim one); was denied a fair trial because of prosecutorial misconduct (claim two); was convicted in violation of the Fourth Amendment because police withheld exculpatory evidence in obtaining the search warrant (claim three); and that identity violations occurred during the police investigation regarding multiple photo arrays (claim four). This Court dismissed claims one, two and four as procedurally defaulted, and claim three as failing to offer a basis for relief. *Opinion and Order* (ECF No. 34).

The Court receives Petitioner's February 27, 2017 *Motion to Reconsider* as a timely motion to alter or amend pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. Such a motion may be granted "if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice." *GenCorp, Inc. v. American Intern. Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999)(citations omitted). Petitioner's *Motion to Reconsider*, which is wholly conclusory, offers no persuasive reason to alter or amend the dismissal of this action. The *Motion to Reconsider* (ECF No. 36) is therefore **DENIED**.

The Court also receives Petitioner's *Notice of Appeal* (ECF No. 37) as including a request for a certificate of appealability. "In contrast to an ordinary civil litigant, a state prisoner who seeks a writ of habeas corpus in federal court holds no automatic right to appeal from an adverse decision by a district court." *Jordan v. Fisher*, — U.S. —, 135 S.Ct. 2647, 2650 (2015); 28 U.S.C. § 2253(c)(1)(requiring a habeas petitioner to obtain a certificate of appealability in order to appeal). When a claim has been denied on the merits, a certificate of appealability may issue only if the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). In order to make a substantial showing of the denial of a constitutional right, a petitioner must show "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880 (1983)). When a claim has been denied on procedural grounds, a certificate of appealability may issue if the petitioner establishes that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack*, 529 U.S. at 484.

Upon review of the record, this Court is not persuaded that reasonable jurists could debate whether petitioner's claim three should have been resolved differently, nor is the Court persuaded that jurists of reasons would find it debatable whether this Court was correct in its dismissal of claims one, two and four as procedurally defaulted. The Court therefore **DECLINES** to issue a certificate of appealability.

 3-23-2017
EDMUND A. SARGUS, JR.
Chief United States District Judge